

SUMMARY ANALYSIS OF AMENDED BILL

Author: Torrico Analyst: Darrine Distefano Bill Number: AB 2128
 Related Bills: See Prior Analysis Telephone: 845-4142 Amended Date: May 3, 2006
 Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Employer Provided Commuter Benefits Credit

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

X AMENDMENTS DID NOT RESOLVE THE DEPARTMENTS CONCERNS stated in the previous analysis of bill as amended April 17, 2006.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

X REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED April 17, 2006, STILL APPLIES.

X OTHER – See comments below.

SUMMARY

This bill would provide a tax credit for employers that provide commuter benefits to their employees.

SUMMARY OF AMENDMENTS

The May 3, 2006, amendments made the following changes:

- Extends the sunset date from January 1, 2017 to January 1, 2018.
- Deletes the term “qualified” from several terms in the bill.
- Deletes the term and definition of “commuter.”
- Requires the qualified mass transit to be registered annually with the Department of Motor Vehicles (DMV).
- Defines the “owner” as a titleholder, possessor, or otherwise maintains ownership of the motorized vehicle used as the qualified mass transit.
- Requires the owner to remit to DMV, instead of the Franchise Tax Board (FTB), as a condition of the annual registration the lesser of the amount of tax credit claimed or the applicable percentage.

Board Position:

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Legislative Director

Date

Brian Putler

6/7/06

- Eliminates the credit to a qualified taxpayer if an owner is unable to receive payments electronically.
- Requires the owner of a qualified mass transit, if requested by FTB or the DMV, to report within 60 days the number of qualified passengers that paid for its services.
- Requires the owner to notify the qualified taxpayer in writing within 30 days that the qualified taxpayer is ineligible to receive a credit under this section if the owner has not met the minimum requirements for operating a motorized vehicle over a 7 day period in a calendar month.
- Requires DMV, instead of FTB, to create rules for the qualified taxpayer to verify that each qualified mass transit operates a qualified motorized vehicle.
- Removes the term “violation” and replaces it with “noncompliance” for an owner that fails to comply with the provisions of this bill.
- Requires any noncompliance issues to be reported to DMV, instead of FTB.
- Deletes the provision that would prohibit a taxpayer from claiming the federal deduction for ordinary and necessary business expenses, which generally would include transit passes or other commuter benefits to employees.

The May 3, 2006, amendments resolve several implementation and technical considerations that were presented in the April 17, 2006 analysis. As a result of the May 3rd amendments, additional implementation considerations are addressed below. The remaining implementation and technical considerations are also provided below. The remainder of the bill as amended April 17th still applies.

POSITION

Pending.

ANALYSIS

IMPLEMENTATION CONSIDERATIONS

The language of the bill utilizes a method for qualifying and calculating the credit, which may make it difficult for both taxpayer compliance and department administration. Department staff is available to provide further assistance to the author to resolve the concerns noted in this analysis.

Below are the concerns for the bill as amended May 3, 2006:

The bill removes FTB and inserts DMV as the agency that regulates the owner of a qualified mass transit. However, those regulatory provisions remain in the Revenue & Taxation Code (R&TC). DMV administers the Vehicle Code. The author may wish to place the provisions relating to the owner in the Vehicle Code and retain the credit provisions in the R&TC. Each of these provisions should cross reference each other to ensure the credit and remittance is applied correctly.

Even if the regulatory provisions are moved to the Vehicle Code, the complexity of the bill's language and focus on the owner of a qualified mass transit would be difficult for DMV to administer.

The bill defines the term "owner of qualified mass transit" as an individual or entity that operates or manages a motorized vehicle and as the titleholder, possessor, or otherwise maintains ownership of a motorized vehicle. The author may wish to combine both definitions for ease of understanding.

It is unclear if DMV would need to verify with FTB the amounts reported by an owner. It is unclear how amounts would be reconciled or if they need to be reconciled because the owner would be responsible for remitting either the total amount of credit taken by taxpayers or the applicable percentage to DMV. The author may wish to have the taxpayer report the amount of credit claimed to the owner in order for the owner to determine what amount needs to be remitted to DMV.

Another alternative is a system or a type of process in place to verify amounts claimed with amounts remitted to the DMV. This alternative may incur costs for either FTB or DMV, depending on which department would be responsible for the system.

In addition, depending on the timing of the annual registration with DMV, the owner would be required to estimate the amount claimed because credit information may be unavailable.

The bill replaces the term "violations" with "noncompliance" by the owner of a qualified mass transit. Sanctions for failure to comply with tax credit provisions are generally imposed on the taxpayer claiming the credit and are reserved for failure to comply with essential aspects of a credit. The noncompliance with provisions in this bill continues to be imposed on a third party. A similar concern was originally brought up in the department's analysis of the bill as amended April 17th.

Below are the concerns for the bill as amended April 17, 2006:

The bill defines "existing publicly funded mass transit commuter route" in terms of the route, but lacks a requirement for a route to be related to a publicly funded mass transit system.

The bill limits the amount a qualified taxpayer may pay for the commuter benefits. Normally, tax credit language is written to limit the credit to a percentage of the amount paid. Limiting the amount that may be paid creates significant compliance issues. The department would need to determine that amounts paid did not exceed a certain amount. The department does not routinely examine amounts in excess of the amount that would provide the basis for a credit. In order for the department to determine if the credit was claimed correctly, the taxpayer would need to provide information on the total number of employees that received a qualified transportation benefit under Section 132(f) of the Internal Revenue Code (IRC) and the total amount paid. This verification process could delay the FTB's return processing procedures.

The bill lacks definitions for the term “commuter benefits credit program” and “publicly funded mass transit system”.

TECHNICAL CONSIDERATIONS

On page 7, line 5 and on page 13, line 40, it appears that the language should reference paragraph (5), instead of paragraph (4).

FISCAL IMPACT

As stated under “Implementation Considerations,” if FTB is required to create a separate database to verify payments, the department would incur costs for creating and maintaining that system. In addition, department resources may need to be re-directed if information under Section 132 (f) of the IRC needs to be verified. That, in turn, could delay return processing. The additional costs have not been determined at this time. As the bill continues to move through the legislative process, costs will be identified and an appropriation will be requested.

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